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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA KASULKE, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202			THAKUR, VIREN A	
		ART UNIT		PAPER NUMBER
		1782		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhartlaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,304	STRAND ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	VIREN THAKUR	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 January 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 148, 152-155, 157-167, 169, 179, 187-191 and 193-218 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 148, 152-155, 157-166, 169, 179, 187-191 and 193-218 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 14, 2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1. Claims 169,179, 191,217,218 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 169 and 179 recite "a bottom portion included in said sheet of web material and located intermediate said first and second side panels." The above limitation does not specify whether "a second panel" is part of the single sheet of web material or can be another sheet such as being "coupled" to the single sheet. Furthermore, it is noted that these claims recite the limitation "said sheet of web material including a first panel "coupled to said fold structure adjacent said first area of structural

weakness." The claims further recite, "a bottom portion included in said sheet of web material." Since the bottom sheet is included in (i.e. is part of) the single sheet of web material, it is not clear as to how a first panel can be "coupled to said fold" while the bottom is integral or made from the single sheet of web material. This is further unclear since the term "coupled" connotes two separate materials that have been secured together. Furthermore, the limitation of the first sheet being "coupled" makes the claim unclear as to whether a single sheet or multiple sheets can be employed to make the bag.

Claim 191 recites the limitation "the backing strop also having the lower portion coupled to said second panel of the sheet of web material." This limitation appears to indicate that the bag is sealed. It is noted however, that independent claim 187 recites that the bag has an opening between the backing strip and the second panel. Therefore, limitations recited in claim 187 would no longer be present (i.e. the opening) in view of claim 191, which essentially closes the opening.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 2. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-213 and 216-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763) in view of May (US 5725312), Belmont et al. (US 6327754), McMahon (US 6138439) and Weeks (US 5092684) and in further view of Buchman et al. (US 20010053253), Provan (US 6286189), and Malin (US 6183134).**

Regarding claims 148, 169, 179, 187 and 212, Stolmeier et al. teaches employing a hood (figure 7, item 60) having a fold located between first and second ends of the hood (see figure 7), a first and second side panel (figure 7A), a bottom intermediate the first and second panels and a reclosable fastener structure including first and second interlockable fastener tracks (Figure 7, item 70), each having a skirt structure of skirt web material extending therefrom, (see the portions below the reclosable fastener structures as well as figures 3 and 4). The skirt structures are secured to the inside walls of the first and second side panels (see figures 2 and 2A, for instance). The hood is also clearly coupled to the skirt structures, as shown in figure 7. Regarding the areas of structural weakness, it is noted that Stolmeier et al. teaches the

hold comprising areas of structural weaknesses, such that the reclosable fastener structures extend above the areas of structural weakness (72).

Stolmeier et al. is silent in reciting that the hood and the first, second and bottom of the bag are made from the same piece of material.

Nevertheless, it is noted that the use of a single sheet of web material, employed for providing a hood structure and contiguously providing the product containing walls of the bag has been a conventionally employed in the art, as evidenced by May (see figure 1). Belmont et al. provides further evidence that it was conventional in the art to employ a single sheet of web material for the purpose of making a hood structure into which reclosable fasteners have been placed (figure 3c). Even McMahon et al. teaches the use of a single sheet of web material (figure 19, item 82). Additionally, Weeks also teaches in figure 4, that a single sheet of web material can be employed which results in the formation of a hood structure to cover the reclosable fasteners and which further, can result in an side seam for filling product into the bag (Column 6, lines 40-43). Therefore to make the hood and the bag of Stolmeier et al. from a single sheet of web material would have been an obvious matter of choice and design, since it has been known in the art to make a bag and the hood that covers the reclosable fasteners from a single sheet of web material. It is noted that Stolmeier et al. uses a sheet of web material for the covering over the fastener structure as well as a sheet of web material for the product containing section of the bag (figure 7). May, Belmont, McMahon and Weeks are all similar to Stolmeier in that they provide a covering over the reclosable fastener similar to Stolmeier. Therefore, since the art teaches using a single sheet of

web material to provide the covering structure over the reclosable fasteners as well as to provide the product containing portion of the bag, to therefore modify Stolmeier et al. and employ a single sheet of web material would have been an obvious matter of choice and/or design. Additionally, such a modification would have been obvious to the ordinarily skilled artisan, for the purpose of reducing the number of seals required to produce the bag. Belmont (Figure 3a) teaches that a single sheet would not have required a seal at the bottom, since the sheet is continuous, and thus would only require four seals (for the two sides and for sealing the skirt structures to the web). By employing multiple sheets of material, it would have been obvious to the ordinarily skilled artisan that additional seals would have been required. For instance, employing a separate hood as taught by Stolmeier et al. would have required additional sealing of the hood to the skirt structure as well as the side panels of the bag to the skirt structure. If this was one continuous sheet, then these two sets of seals could have been reduced to only one set of seals, thus reducing the number of seals required.

It is noted however, that claims 169 and 179 recite the limitations “including a first panel coupled to said fold structure adjacent said first area of structural weakness and a second panel.” This limitation appears to indicate that the first panel is separate from the single sheet of web material, since the term “coupled” means that an attachment of one element to another has occurred. Also, the above limitation does not specify whether “a second panel” is part of the single sheet of web material or can be another sheet. It is noted that this becomes further unclear since claims 169 and 179 recite “a bottom portion included in said sheet of web material and located intermediate said first

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and second side panels.” This would appear to indicate that the bottom portion would be integral with the sheet employed for the fold but then employs side webs that are not contiguous/integral with the single sheet of web material.

If the claims were construed as reciting that the reclosable bag was made from a single sheet of web material, then this has already been addressed above. Construing these claims to read that additional sheets could be employed, it is noted that Stolmeier et al. teaches the first and second panels of the bag can also be coupled to the single sheet of web material employed for the hood (See figure 7B, items 60 and 12 and 13). Therefore, the art has recognized that it has been conventional to employ a single sheet of web material for making the hood and side panels of the bag, as well as employing separate material for the hood and the side panels of the bag and thus to employ one or the other would thus have been an obvious matter of choice and/or design to one having ordinary skill in the art. For instance if reducing the number of seals required to produce the bag was a necessity, then a single sheet would have been advantageous, however, if this was not a concern, then to employ multiple sheets would equally have been obvious to the ordinarily skilled artisan. If applicants intended to only employ a single sheet of material for the entire bag, reciting, for instance, that “said reclosable bag consists of a single sheet of web material” would provide clarification.

Stolmeier et al. are silent in teaching a cheese bag, however, it is noted that Stolmeier et al. teaches that tamper evidence bags have been conventionally employed in the art for packaging food products (see column 1, lines 19-22). Stolmeier et al. also teaches pre-packaging of products within the bag (column 3, lines 40-48). Additionally,

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Buchman et al. also teaches a bag similar to Stolmeier et al., which is used to pre-fill with food (paragraph 0003, 0053). Buchman et al. is similar to Stolmeier et al. in that Buchman also teaches employing an enclosing hood over the reclosable fastener (see figure 7). Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31), as does Belmont et al. (column 4, lines 62-64). Therefore, once the prior art taught that the ordinarily skilled artisan can pre-package food products within the bag and based on the teachings of Provan et al. and Belmont et al., to package cheese would have been obvious to one having ordinary skill in the art, as an obvious matter of choice depending on the particular conventional pre-packaged food that the ordinarily skilled artisan would have desired to package.

Stolmeier et al. obviously teach an opening in the bag since the bag is pre-filled with a product, but Stolmeier et al. are silent as to the particular location of the opening in the bag as recited in claims 148, 169, 179, 187 and 212.

It is noted however, that Buchman et al. teaches that it has been conventional to provide an opening in the bag at the side, between the second skirt structure and the sidewall of the bag (paragraph 0065). Buchman et al. teaches that it has been conventional to provide a fill opening on the side between the skirt and the panel of the bag for the purpose of filling the bag therefrom. Additionally, Belmont further teaches this concept (see figure 3b). Weeks further teaches the concept of a side filling opening (see figure 4), while employing a single sheet of material. Since the art already teaches employing a single sheet of material which can be used to make the product

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containing portion of the bag as well as the covering structure for the reclosable fastener, while also having an opening on the side of the bag through which the product can be filled into the bag, to therefore employ a single sheet such that the opening is between the sidewall of the bag and the skirt structure would thus have been an obvious matter of choice and/or design as to how the ordinarily skilled artisan would have chosen to fill the bag. Furthermore, it is noted that the art, taken as a whole, already teaches that the opening is on the side of the bag structure, between the skirt structure and the side panel. Therefore, to employ a single sheet of web material for both the covering element and the bag, while still retaining this a side opening would have been an obvious rearrangement of the particular orientation of the single bag structure for the purpose of providing a conventional side opening to the bag.

The combination is sill silent in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein the backing strip capable of being sealed to the sheet of web material, for sealing the opening. As disclosed by applicants, the backing strip is bonded to the web material after the bag is filled for the purpose of closing the bag, however, independent claims 148,169,179,187 and 212 are not specific as to the particular location of the backing strip.

Nevertheless, Malin (US 6183134) teaches sealing the web material employed for the bag to an extending backing strip instead of directly to the skirt structure (figure 3). Thus teaching the limitation of a backing strip which is coupled to the skirt structure and wherein the backing strip is coupled to the sheet of web material. Additionally, it is noted that Malin also teaches using the backing strip to secure the web material of the

bag to the reclosable zipper, for the purpose of improving the sealability of the bag to the zipper structure (column 3, lines 13-30). Since the combination already teaches filling the product into the bag through an opening between the fastener skirt structure and the sheet of web material, to therefore modify the previous combination of references and include a backing strip that adheres to the skirt which can seal the web material for the bag to the reclosable fastener structure would have been further obvious to one having ordinary skill in the art, for the added purpose of ensuring that the bag material is effectively sealed to the reclosable fastener structure.

Regarding claims 152, 153, 188 and 189, Stolmeier et al. teach that the skirt web material is integral to said reclosable fastener structure (see figure 7). It is noted that the claims do not clearly specify whether “said skirt web material” of “said reclosable fastener structure” refers to “the skirt web material of the first and second interlockable fastener tracks.” It is noted however, that the claim has been construed to read that “said skirt web material” refers to the skirt web material of both the first and second interlockable fastener tracks. Regarding claims 153 and 189, which recite that the skirt has been coupled to the fastener structure, it is noted that Weeks already teaches this concept by teaching downwardly extending fins (figure 4, item 14; figure 5, item 14 and column 4, lines 52-55). Therefore, whether the ordinarily skilled artisan employed a unitary contiguous structure or two elements that were coupled together would thus have been an obvious matter of choice and/or design, since both these techniques have been conventionally employed for securing skirt structures to reclosable fasteners.

Regarding claims 154 and 210, Stolmeier et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon whereby a peel seal can be formed. However, May further teaches wherein the two panels of the food bags comprise a multi-laminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light of column 20, line 25 to column 21, line 8 and figures 19 and 20, items 320 and 322), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15).

Additionally, Buchman et al. similarly teach tamper evidence on the skirt structures (figure 7, item 72) used to separate the skirt structures. Therefore, to modify the combination and include a peal seal adhesive between the skit structures would thus have been obvious to one having ordinary skill in the art, for the purpose of providing additional tamper evidence features to the bag. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a conventional expedient for performing the similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 7 of Stolmeier et al. that the skirt has an inside and outside surface.

Further regarding claims 205 and 206, which recite that the film is a multi-laminate film, it is noted that Stolmeier appears silent in this regard. Nevertheless,

Belmont et al. also teaches the concept of employing multiple laminate films (column 3, lines 55-57 and column 4, lines 25-29). To therefore employ a multiple laminate film would have been an obvious to the ordinarily skilled artisan as routinely determinable by experimentation for obtaining the desired properties that come as a result of employing multiple layers of films. Further regarding claim 206, which recites that one of the layers comprises a tear path, it is noted that Stolmeier et al. and McMahon et al. already teach employing a tear path on one layer. Therefore at least one layer of a multi-laminated film would still have comprised a tear path. Additionally, May also teaches employing multi-laminate films for the purpose of achieving the desired properties to the bag, such as for facilitating tearing of the bag. Additionally, multiple laminates have been conventionally employed for the purpose of providing additional properties to the film, such as increased toughness and gas barrier properties. Therefore, to modify the combination and employ multiple laminate films would have been obvious to the ordinarily skilled artisan, for the purpose of providing a tearable path and peel seal which would thus facilitate opening and retain freshness or for cumulatively adding properties to the bag.

Regarding claims 155 and 193, the previous combination of references teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, the combination of references teach linear areas of structural weakness across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.) that are perforations having a predetermined pattern.

Regarding claims 157 and 194, since the combination of references teaches using a continuous sheet of web material for the bag and the hood and since the art teaches providing perforations (i.e. structural weaknesses) within the material used to cover the reclosable fastener structure (i.e. hood) for the purpose of facilitating removal of the covering sheet, it would have been obvious to one having ordinary skill in to employ lines of structural weakness integral to the continuous sheet of web material for the purpose of removing the hood structure for accessing the reclosable zipper.

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would have to have been perforated.

Regarding claim 190, the skirt structures inherently include an inside and outside surface with upper and lower portions.

Regarding claims 207-209, Stolmeier et al. teach a slider fastener assembly.

Regarding claims 211, 213, 216, 217 and 218, Stolmeier et al. on column 4, lines 38-39) teach providing a gusset for allowing easier access to the bag.

3. **Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above, and in further view of Hayashi (US 6074097).**

The combination of the references applied above are silent in teaching non-linear structural weaknesses across a predetermined dimension of said sheet of web material, as recited in claims 161 and 198 and wherein the perforations are microperforations, as recited in claims 167 and 204.

Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al. is relied on as evidence of the conventionality of providing a non-linear structural weakness (i.e. not a straight line), for opening a bag (Column 18, Lines 31-40; Figure 10). Hayashi et al. teach the preferred non-linear length and width (Figure 10, Item 106) and further wherein the perforations are micro-perforations, which provide greater tear strength and a more easily controlled line of weakness (Column 13, Line 35 to Column 14, Line 12). Therefore, it would have been obvious to further modify the prior art combination and include a microperforated and non-linear line of weakness at a predetermined length and width since Hayashi et al. teach that providing non-linear tear path and microperforations provides greater tear strength and control. Such a modification will ensure that the tearing of the area above the structural weakness will be controlled and will not remove more of the web material than intended by the manufacturer.

Regarding claims 162 and 199, the predetermined dimension is considered the width of the sheet of web material.

Regarding claims 163 and 200, the predetermined dimension is also considered the length of the sheet of web material.

**4. Claims 191, 214, 215 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above, and in further view of Van Erden et al (US 4925316), Handler (EP450741) and Ausnit (EP0951989 - US 6694704 has also been relied on as an English equivalent).**

Regarding claim 191, which recites that “a lower portion of the backing strop extends below said lower portion of said inside surface of said skirt structure and an upper portion is adhesively joined to said inside surface of said skirt structure, the skirt structure having one portion of its lower portion coupled to said sheet of web material most distal from said first panel,” it is noted that Malin, as applied above in the rejection relying on Stolmeier as the primary reference, already teaches a backing strip adhered to the skirt structure of the reclosable fastener structure for the purpose of facilitating securing of the sheet of web material thereto, as discussed above. Whether this backing strip was adhered to the inside or the outside of the skirt structure would not have altered its function of providing an expedient for sealing the sheet of web material thereon. Since this particular position of the backing strip would not have altered its function, to therefore secure the backing strip to the inside of the skirt structure would

have been an obvious rearrangement of parts that would have been matter of choice and/or design to one having ordinary skill in the art. In any case, it is noted that Van Erden teaches a first side of the sheet of web material (figure 5, item 110) and a second side (figure 5, item 108) wherein the second side comprises a sheet of web material that has been secured to both the skirt of the reclosable fastener and to a backing strip (item 117). It is noted that the portion of the backing strip taught by Van Erden that secured to the skirt on the right side, in figure 5, is secured to the inside of the skirt structure on that side by way of a peel seal (see column 4, lines 2-10). It is noted that the portion of the backing strip on secured to the left skirt has the backing strip secured to both the skirt and the bag. Furthermore, Stolmeier et al. teaches a structure similar to that of Van Erden, but which has been secured to the inside of the skirt (figure 16, item 402 and column 6, lines 3-12). Nevertheless, it is noted that Handler further teaches the concept of a backing material, figure 4, item 13 comprising multiple plies (see column 2, lines 47-52) which has been secured to the inside of the skirt structure. Therefore, to orient the backing strip, such that the backing strip was secured to the inside of the skirt and to the web would have been an obvious rearrangement of the particular order in which the two components were sealed together.

In addition, it is noted that Ausnit teaches the inclusion of a backing strip (9, items 16 with item 20 and item 18 with item 14, wherein the backing strip has a portion adhered to the skirt (48) and to the bag (36) wherein the material 14 and 16 prevent adhesion of those two portions of the bag (see column 6, line 55to column 7, line 34) and paragraph 0042-0044 of the foreign document). This has also been evidenced by

May, who teaches a similar concept of preventing adhesion when heat sealing (see column 8, lines 15-34). Thus, the art has even recognized another advantage of employing a backing strip, which is to prevent adhesion between opposite structures when heat sealing.

Claim 214 is rejected for the reasons given above with respect to independent claims 148, 169, 179, 187 and 212 but includes the limitation of the backing strip mounted on the side of the skirt structure opposite the second end of the hood, which thus reads on the inside of the second skirt structure. This is similar to claim 191, above and thus, claim 214 is further rejected for the reasons given above with respect to claim 191. Claim 215, which recites the inclusion of a gusset, is rejected for the reasons given above with respect to claims, 211, 213, 216, 217 and 218

**5. Claims 148,169,179,187,212 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763) and McMahon (US 6138439) and in further view of May (US 5725312), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), and Malin (US 6183134).**

Regarding claims 148, 169, 179, 187 and 212, Buchman et al. teach employing a hood having a fold located between first and second ends of said hood (See Figure 7), a first side panel (figure 7, item 12), a second side panel (figure 7, item 14), a bottom intermediate said first and second panels, a reclosable fastener structure including first and second interlockable fastener tracks (Figure 7, item 20), each having a skirt

structure of skirt web material extending therefrom (figure 7, item 37 and 39), said skirt structures each including a distal portion that are coupled to said first and second end of said hood (figure 7, see hood coupled to skirts). Buchman et al. also teach that the covering/hood structure has been coupled to the skirt structures of the reclosable fasteners, as well.

Buchman et al. are silent in teaching areas of structural weakness located intermediate said fold and said first and second ends of said hood.

It is noted however, that Buchman et al. teach using perforations to facilitate removal of the tamper evident structure (figure 7, item 65 and paragraph 0067) and further teach in figure 7 wherein the reclosable fasteners extend into the hood structure. Therefore, it has been recognized to employ areas of structural weakness in a structure that covers the reclosable fastener for the purpose of facilitating removal of the covering element. Nevertheless, Stolmeier et al. (Figure 7, item 72) and McMahon (Figure 19, item 132) have been relied on as evidence that it was conventional to provide structural weaknesses for removing a hood structure into which a pair of reclosable fastener tracks are extend. It would have been obvious that one would be required to use some expedient for removing the covering over the fastener structures (such as tearing or using scissors). Nevertheless, both Stolmeier et al. and McMahon teach providing lines of perforations which result in the hood being removed and the fastener structures extending above the sheet of web material, thus facilitating access to the fastener structures. Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one

having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of Buchman et al. and thus facilitating access to the reclosable fastener.

Buchman et al. are silent in teaching that the hood and the bag are made from a single sheet of web material.

Nevertheless, it is noted that the use of a single sheet of web material, employed for providing a hood structure and contiguously providing the product containing walls of the bag has been a conventionally employed in the art, as evidenced by May (see figure 1), Belmont et al. (figure 3c), McMahon et al. (figure 19, item 82), Weeks (figure 4; column 6, lines 40-43), as discussed in the rejection above which relies on Stolmeier as the primary reference. Therefore, since the art teaches using a single sheet of web material to provide the covering structure over the reclosable fasteners as well as to provide the product containing portion of the bag, to therefore modify Buchman et al. and employ a single sheet of web material would have been an obvious matter of choice and/or design. Additionally, such a modification would have been obvious to the ordinarily skilled artisan, for the purpose of reducing the number of seals required to produce the bag. Belmont (Figure 3a) teaches that a single sheet would not have required a seal at the bottom, since the sheet is continuous, and thus would only require four seals (for the two sides and for sealing the skirt structures to the web). By employing multiple sheets of material, it would have been obvious to the ordinarily skilled artisan that additional seals would have been required. For instance, employing a separate hood as taught by Buchman et al. would have required additional sealing of the hood to the skirt structure as well as the side panels of the bag to the skirt structure.

If this was one continuous sheet, then these two sets of seals could have been reduced to only one set of seals, thus reducing the number of seals required

It is noted that Buchman already teaches that the opening is on the side of the bag structure, between the skirt structure and the side panel. Therefore, to employ a single sheet of web material for both the covering element and the bag, while still retaining this side opening required by Buchman would have been an obvious rearrangement of the particular orientation of the single bag structure for preserving a side opening to the bag taught by Buchman, while also reducing the number of sealing points, as discussed above.

It is noted however, that claims 169 and 179 recite the limitations “including a first panel coupled to said fold structure adjacent said first area of structural weakness and a second panel.” This limitation appears to indicate that the first panel is separate from the single sheet of web material, since the term “coupled” means that an attachment of one element to another has occurred. Also, the above limitation does not specify whether “a second panel” is part of the single sheet of web material or can be another sheet. It is noted that this becomes further unclear since claims 169 and 179 recite “a bottom portion included in said sheet of web material and located intermediate said first and second side panels.” This would appear to indicate that the bottom portion would be integral with the sheet employed for the fold but then employs side webs that are not contiguous/integral with the single sheet of web material.

If the claims were construed as reciting that the reclosable bag was made from a single sheet of web material, then this has already been addressed above. Construing

these claims to read that additional sheets could be employed, it is noted that Stolmeier et al. teaches the first and second panels of the bag can also be coupled to the single sheet of web material employed for the hood (See figure 7B, items 60 and 12 and 13). Therefore, the art has recognized that it has been conventional to employ a single sheet of web material for making the hood and side panels of the bag, as well as employing separate material for the hood and the side panels of the bag and thus to employ one or the other would thus have been an obvious matter of choice and/or design to one having ordinary skill in the art. For instance if reducing the number of seals required to produce the bag was a necessity, then a single sheet would have been advantageous, however, if this was not a concern, then to employ multiple sheets would equally have been obvious to the ordinarily skilled artisan. If applicants intended to only employ a single sheet of material for the entire bag, reciting, for instance, that "said reclosable bag consists of a single sheet of web material" would provide clarification.

Regarding the opening, Buchman et al. teach an opening located between the skirt structure and the second side panel of the sheet of web material (Paragraph 0065) for filling the bag with food (paragraph 0053).

Buchman et al. are silent in reciting a cheese bag, however, Buchman et al. teach filling the bag with food. Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31), as does Belmont et al. (column 4, lines 62-64). Once it was taught that one can package food products within the bag of Buchman et al. and based on the teachings of

Provan et al. and Belmont et al., to package cheese would have been an obvious matter of choice and/or design that not have provided a patentable feature over the prior art.

The combination is still silent in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein the backing strip capable of being sealed to the sheet of web material, for sealing the opening. As disclosed by applicants, the backing strip is bonded to the web material after the bag is filled for the purpose of closing the bag, however, independent claims 148,169,179,187 and 212 are not specific as to the particular location of the backing strip.

Nevertheless, Malin has been relied on as discussed above in the rejection relying on Stolmeier as the primary reference, to teach employing a backing strip to secure the web material of the bag to the reclosable zipper, for the purpose of improving the sealability of the bag to the zipper structure (column 3, lines 13-30). Since the combination already teaches filling the product into the bag through an opening between the fastener skirt structure and the sheet of web material, to therefore modify the previous combination of references and include a backing strip that adheres to the skirt which can seal the web material for the bag to the reclosable fastener structure would have been further obvious to one having ordinary skill in the art, for the added purpose of ensuring that the bag material is effectively sealed to the reclosable fastener structure.

Regarding claims 152, 153, 188 and 189, Buchman et al. teach that the skirt web material is integral to said reclosable fastener structure (see figure 7). It is noted that the claims do not clearly specify whether “said skirt web material” or “said reclosable

fastener structure” refers to “the skirt web material of the first and second interlockable fastener tracks.” It is noted however, that the claim has been construed to read that “said skirt web material” refers to the skirt web material of both the first and second interlockable fastener tracks. Regarding claims 153 and 189, which recite that the skirt has been coupled to the fastener structure, it is noted that Weeks already teaches this concept by teaching downwardly extending fins (figure 4, item 14; figure 5, item 14 and column 4, lines 52-55). Therefore, whether the ordinarily skilled artisan employed a unitary contiguous structure or two elements that were coupled together would thus have been an obvious matter of choice and/or design, since both these techniques have been conventionally employed for securing skirt structures to reclosable fasteners.

Regarding claims 154 and 210, Buchman et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon whereby a peel seal can be formed. However, May has been relied on as discussed above in the rejection relying on Stolmeier et al. as the primary reference, to teach employing a multiple laminate film and a peelable seal between the fasteners, for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15). Therefore, to modify the combination and include a peal seal adhesive between the skit structures would thus have been obvious to one having ordinary skill in the art, for the purpose of providing additional tamper evidence features to the bag. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been

a conventional expedient for performing the similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 7 of Stolmeier et al. that the skirt has an inside and outside surface.

Further regarding claims 205 and 206, which recite that the film is a multi-laminate film, it is noted that Buchman et al. appears silent in this regard. Nevertheless, Belmont et al. also teaches the concept of employing multiple laminate films (column 3, lines 55-57 and column 4, lines 25-29). To therefore employ a multiple laminate film would have been an obvious to the ordinarily skilled artisan as routinely determinable by experimentation for obtaining the desired properties that come as a result of employing multiple layers of films. Further regarding claim 206, which recites that one of the layers comprises a tear path, it is noted that Stolmeier et al. and McMahon et al. already teach employing a tear path on one layer. Therefore at least one layer of a multi-laminated film would still have comprised a tear path. Additionally, May also teaches employing multi-laminate films for the purpose of achieving the desired properties to the bag, such as for facilitating tearing of the bag. Additionally, multiple laminates have been conventionally employed for the purpose of providing additional properties to the film, such as increased toughness and gas barrier properties. Therefore, to modify the combination and employ multiple laminate films would have been obvious to the ordinarily skilled artisan, for the purpose of providing a tearable path and peel seal

which would thus facilitate opening and retain freshness or for cumulatively adding properties to the bag.

Regarding claims 155 and 193, combination of references as applied to the independent claims, above, teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, the combination teaches linear areas of structural weakness across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.) that are perforations having a predetermined pattern.

Regarding claims 157 and 194, since the combination of references teaches using a continuous sheet of web material for the bag and the hood and since the art teaches providing perforations (i.e. structural weaknesses) within the material used to cover the reclosable fastener structure (i.e. hood) for the purpose of facilitating removal of the covering sheet, it would have been obvious to one having ordinary skill in to employ lines of structural weakness integral to the continuous sheet of web material for the purpose of removing the hood structure for accessing the reclosable zipper.

Regarding claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations

in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would have to have been perforated.

Regarding claim 190, the skirt structures inherently include an inside and outside surface with upper and lower portions.

Regarding claims 207-209, Buchman et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 216, 217 and 218, Buchman et al. are silent in teaching wherein the bottom comprises a gusset.

However, Stolmeier et al. on column 4, lines 38-39) teach providing a gusset for allowing easier access to the bag. Additionally, it has also been conventional in the art to use a gusset for the purpose of providing additional support to the bottom of the bag. Therefore, it would have been obvious to the ordinarily skilled artisan to provide a gusset for the purpose of providing easier access to the contents of the bag as well as to provide additional support to the bottom of the bag.

**6. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above in the rejection relying on Buchman (US 20010053253) as the primary reference, and in further view of Hayashi (US 6074097).**

These claims are rejected for the reasons given in the analogous rejection relying on Stolmeier et al. as the primary reference.

7. **Claims 191, 214, 215 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above in the rejection relying on Buchman (US 20010053253) as the primary reference, and in further view of Van Erden et al (US 4925316), Handler (EP450741) and Ausnit (EP0951989 - US 6694704 has also been relied on as an English equivalent)..**

These claims are rejected for the reasons given in the analogous rejection relying on Stolmeier et al. as the primary reference.

8. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-213, 216-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) and in view of Stolmeier et al. (US 6257763), McMahon (US 6138439), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), May (US 5725312) and Malin (US 6183134).**

Regarding claims 148, 169, 179, 187 and 212, Thomas et al. teach a reclosable bag comprising a reclosable fastener structure having a first and second side panel and a gusseted bottom (See Figure 7). Each of the male and female reclosable fastener structures comprise a skirt structure having a distal portion. Thomas et al. further teach an opening located between the skirt structure and the side panel (Figure 7) through which a food product can be filled into the bag (Column 1, line 40).

The claims differ from Thomas et al. in reciting wherein the bag comprises a hood structure.

Buchman et al. and Stolmeier et al. have been relied on as discussed in the previous rejections, to teach that it has been conventional in the art to employ a hood over the reclosable fastener. Therefore to modify Thomas et al. and provide a hood to enclose the reclosable fastener structure of Thomas et al. would have been obvious to the ordinarily skilled artisan, for the purpose of providing additional tamper evidence and protection to the reclosable fastener.

Claims 148,169,179,187 and 212 further differ from the combination in reciting that the hood is defined by areas of structural weakness located intermediate said fold in said hood and said first and second ends of the hood.

It is noted that Buchman et al. teach providing perforations. Stolmeier et al. and McMahon have been relied on as discussed in the rejections above to teach that it has been conventional to provide perforations and to provide perforations such that the fasteners extend above the perforations. These references are all similar in that they teach bags containing products therein, which have tamper evidence features. Therefore to modify the combination and provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood. Such a modification would have provided improved access to the fasteners, since they would have extended above the bag as well. .

The claims further differ from the combination in reciting wherein the bag (and hood) comprises a single sheet of web material.

Nevertheless, it is noted that the use of a single sheet of web material, employed for providing a hood structure and contiguously providing the product containing walls of the bag has been a conventionally employed in the art, as evidenced by May (see figure 1), Belmont et al. (figure 3c), McMahon et al. (figure 19, item 82), Weeks (figure 4; column 6, lines 40-43), as discussed in the rejection above which relies on Stolmeier as the primary reference.

Therefore, since the art teaches using a single sheet of web material to provide the covering structure over the reclosable fasteners as well as to provide the product containing portion of the bag, to therefore modify Buchman et al. and employ a single sheet of web material would have been an obvious matter of choice and/or design. Additionally, such a modification would have been obvious to the ordinarily skilled artisan, for the purpose of reducing the number of seals required to produce the bag. Belmont (Figure 3a) teaches that a single sheet would not have required a seal at the bottom, since the sheet is continuous, and thus would only require four seals (for the two sides and for sealing the skirt structures to the web). By employing multiple sheets of material, it would have been obvious to the ordinarily skilled artisan that additional seals would have been required. For instance, employing a separate hood as taught by Buchman et al. would have required additional sealing of the hood to the skirt structure as well as the side panels of the bag to the skirt structure. If this was one continuous sheet, then these two sets of seals could have been reduced to only one set of seals,

thus reducing the number of seals required. It is noted that Thomas already teaches that the opening is on the side of the bag structure, between the skirt structure and the side panel. Therefore, to employ a single sheet of web material for both the covering element and the bag, while still retaining this side opening required by Thomas would have been an obvious rearrangement of the particular orientation of the single bag structure for preserving a side opening to the bag taught by Thomas as well. This is further evidenced by Weeks, who teaches a side opening to fill the bag.

It is noted however, that claims 169 and 179 recite the limitations "including a first panel coupled to said fold structure adjacent said first area of structural weakness and a second panel." This limitation appears to indicate that the first panel is separate from the single sheet of web material, since the term "coupled" means that an attachment of one element to another has occurred. Also, the above limitation does not specify whether "a second panel" is part of the single sheet of web material or can be another sheet. It is noted that this becomes further unclear since claims 169 and 179 recite "a bottom portion included in said sheet of web material and located intermediate said first and second side panels." This would appear to indicate that the bottom portion would be integral with the sheet employed for the fold but then employs side webs that are not contiguous/integral with the single sheet of web material.

If the claims were construed as reciting that the reclosable bag was made from a single sheet of web material, then this has already been addressed above. Construing these claims to read that additional sheets could be employed, it is noted that Stolmeier et al. teaches the first and second panels of the bag can also be coupled to the single

sheet of web material employed for the hood (See figure 7B, items 60 and 12 and 13). Therefore, the art has recognized that it has been conventional to employ a single sheet of web material for making the hood and side panels of the bag, as well as employing separate material for the hood and the side panels of the bag and thus to employ one or the other would thus have been an obvious matter of choice and/or design to one having ordinary skill in the art. For instance if reducing the number of seals required to produce the bag was a necessity, then a single sheet would have been advantageous, however, if this was not a concern, then to employ multiple sheets would equally have been obvious to the ordinarily skilled artisan. If applicants intended to only employ a single sheet of material for the entire bag, reciting, for instance, that "said reclosable bag consists of a single sheet of web material" would provide clarification.

The combination is still silent in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein the backing strip capable of being sealed to the sheet of web material, for sealing the opening. As disclosed by applicants, the backing strip is bonded to the web material after the bag is filled for the purpose of closing the bag, however, independent claims 148,169,179,187 and 212 are not specific as to the particular location of the backing strip.

As discussed above, Thomas et al. teach a top opening formed between the skirt and the side panel for filling the bag with a food product.

Nevertheless, Malin has been relied on as discussed above in the rejection relying on Stolmeier as the primary reference, to teach employing a backing strip to secure the web material of the bag to the reclosable zipper, for the purpose of improving

the sealability of the bag to the zipper structure (column 3, lines 13-30). Since the combination already teaches filling the product into the bag through an opening between the fastener skirt structure and the sheet of web material, to therefore modify the previous combination of references and include a backing strip that adheres to the skirt which can seal the web material for the bag to the reclosable fastener structure would have been further obvious to one having ordinary skill in the art, for the added purpose of ensuring that the bag material is effectively sealed to the reclosable fastener structure.

Thomas is silent in teaching a cheese bag, however, Thomas et al. teach filling and prepackaging the bag with a product. Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31), as does Belmont et al. (column 4, lines 62-64). Once it was taught that one can package products within the bag of Thomas et al. and based on the teachings of Provan et al. and Belmont et al., to package a conventionally packaged product, such as cheese would have been an obvious matter of choice and/or design that not have provided a patentable feature over the prior art.

Regarding claims 152 and 188, the skirt structures taught by Thomas et al. are integral to the reclosable fastener structure and thus coupled thereto. Claims 153 and 189 are similarly rejected for the reasons given above in the analogous rejections relying on Stolmeier and Buchman as the primary references. Regarding claim 190, the skirt structures inherently have an inside and outside surface as well as upper and lower portions.

Regarding claims 154 and 210, Thomas et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two panels of the food bags comprise a multi-laminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light of column 20, line 25 to column 21, line 8), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15).

Nevertheless, Thomas et al. similarly teach tamper evidence on the skirt structures used to separate the skirt structures (Column 3, lines 56-65). Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a means of performing a similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 4 of Thomas et al. that the skirt (item 30 or 34) has an inside and outside surface.

Further regarding claims 205 and 206, which recite that the film is a multi-laminate film, it is noted that Buchman et al. appears silent in this regard. Nevertheless,

Belmont et al. also teaches the concept of employing multiple laminate films (column 3, lines 55-57 and column 4, lines 25-29). To therefore employ a multiple laminate film would have been an obvious to the ordinarily skilled artisan as routinely determinable by experimentation for obtaining the desired properties that come as a result of employing multiple layers of films. Further regarding claim 206, which recites that one of the layers comprises a tear path, it is noted that Stolmeier et al. and McMahon et al. already teach employing a tear path on one layer. Therefore at least one layer of a multi-laminated film would still have comprised a tear path. Additionally, May also teaches employing multi-laminate films for the purpose of achieving the desired properties to the bag, such as for facilitating tearing of the bag. Additionally, multiple laminates have been conventionally employed for the purpose of providing additional properties to the film, such as increased toughness and gas barrier properties. Therefore, to modify the combination and employ multiple laminate films would have been obvious to the ordinarily skilled artisan, for the purpose of providing a tearable path and peel seal which would thus facilitate opening and retain freshness or for cumulatively adding properties to the bag.

Regarding claims 155 and 193, combination of references teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, the combination of references as applied to the independent claims teach linear areas of structural weakness across a predetermined dimension of said sheet of web material (See

perforation lines in Figure 7C of Stolmeier et al.), that are perforations having a predetermined pattern.

Regarding claims 157 and 194, since the combination of references teach using a continuous sheet of web material for the bag and the hood, it would have been obvious to one having ordinary skill in the art that the lines of structural weakness would also have been integral to the continuous sheet of web material.

Regarding claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would had to have been perforated.

Regarding claims 207-209, Thomas et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 216, 217 and 218, Thomas et al. teach a bottom comprising a gusset (Column 4, lines 37-43).

**9. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above in the rejection relying on Thomas et al. (US 6148588) as the primary reference, and in further view of Hayashi (US 6074097).**

These claims are rejected for the reasons given in the analogous rejection relying on Stolmeier et al. as the primary reference.

10. **Claims 191, 214, 215 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above in the rejection relying on Thomas et al. (US 6148588) as the primary reference, and in further view of Van Erden et al (US 4925316), Handler (EP450741) Ausnit (EP0951989 - US 6694704 has also been relied on as an English equivalent).**

These claims are rejected for the reasons given in the analogous rejection relying on Stolmeier et al. as the primary reference.

### ***Response to Arguments***

11. The previous rejection of claim 191 under 35 U.S.C. 112, second paragraph has been withdrawn as a result of the amendment to the claims.

12. On page 20-23 of the response, applicants assert the examiner states that the combination asserted in a “matter of design choice” and thus urges that this is not a reason nor an analysis for combining the elements identified by the examiner to obtain that which is disclosed and claimed in the present application. Thus, applicants assert

that the suggestion to make the combination of the multiple references has been taken from applicants' own specification using hindsight.

These arguments have been considered but are not persuasive. Regarding the use of design choice, it is noted, for instance, that the art has clearly recognized that a bag comprising a hood structure can employ a single sheet of web material comprising the hood structure, as well as the panels of the bag, and that multiple sheets can be employed to make the bag. Additionally, the rejections above provide even further motivation for employing a single sheet of web material compared to multiple sheets of web material, such as, for reducing the number of seals employed to make the bag. Regarding the structural weaknesses in the hood, clearly, the art has recognized that applicants' particular placement of the lines of structural weakness have been conventionally employed. By providing the weaknesses such that the fasteners extend above the weaknesses, it would have been obvious to the ordinarily skilled artisan that this would have provided improved access to the reclosable fasteners since they would have been extended beyond the dimensions of the bag. Regarding the backing strip, it is noted that independent claims 149,169,179,187 and 212 are not specific as to the backing strips particular location with respect to the skirt. Since Malin already teaches that a backing strip can help to facilitate adhesion between various materials of construction of the skirt and the bag (which might not adhere well to each other) to thus modify the combination and similarly employ a backing strip for this purpose would have been obvious to the ordinarily skilled artisan. Once this was recognized, the particular location of the backing strip(i.e. inside or outside of the skirt) would have been an

obvious rearrangement of the positioning of the backing strip. Regarding the backing strip located on the inside skirt, as recited in claims 191 and 214, it is noted that the art already teaches this concept as well. Since the art already provides motivation for employing a backing strip for the purpose of securing the skirt and web together, the particular location would indeed have been an obvious rearrangement of conventional components. Regarding the resealable adhesive material on the inside surface of the skirt structures, it is noted that the art clearly teaches motivation for including resealable adhesives, such as for providing a peelable seal for tamper evidence, which thus employs a releasable adhesive.

13. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, as discussed in the response above, the rejections also provide motivation for adding the elements recited in the claims that the primary references were silent in teaching. Therefore, the rejections are not relying on hindsight to add the structural elements, as recited in the claim, which have been conventionally employed for their art recognized function.

14. On pages 23-24 of the response, applicants assert that by having to rely on a number of references to address all the elements in the claim a prima facie case of obviousness has not been presented. This argument is not persuasive. Regarding the number of references, it is noted that, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. Where teachings relied upon to show obviousness were repeated in a number of reference, the conclusion of obviousness was strengthened. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case, the art taken as a whole, clearly provides motivation for a bag having a hood and side panels that have been made from a single sheet of web material and even teaches that this type of structure has been conventional and advantageous for reducing the number of seals employed when making the bag. The art also teaches that pre-packaging food by filling a bag having a reclosable fastener through an opening between the skirt structure and the side panel of the bag has been conventional. The art also teaches that the use of a backing strip for providing improved adhesion between the skirt structures and the web of material of the bag has been advantageous. Therefore, it is not seen that the number of references, on their own, fail to render the claims prima facie obvious.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5788378 discloses the reclosable fasteners coupled to the

first and second fins (column 2, lines 16-32). EP951989 discloses providing a backing material on the interior of the skirt for preventing portions of the backing material from sticking together (see column 6, line 56-column 7, line 34 of US equivalent document US 6694704).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Viren Thakur/  
Examiner, Art Unit 1782